840; see cases collected in 16 MICH. L. REV. 555. The difficulty in the principal case is to determine whether the vendee relied on the judgment and skill of the vendor. On this point the courts are in conflict. *Julian* v. *Laubenberger,* 16 Misc. (N. Y.), 646, created an exception in the case of canned goods; the court said: " . . . . the defendant sells a can of food . . . . It is well known and must be well known to both parties, that he has not inspected it, that he is entirely ignorant of the contents of the can, except so far as he had purchased from respectable dealers on the market . . . . if the purchaser desires to protect himself he may ask for an investigation at the time of purchasing, or he may get an express warranty as to the quality of the goods." The dissenting opinion in the principal case takes this view. In *Bigelow* v. *Maine Central Railroad Co.,* 110 Me. 105, the court denied an implied warranty of wholesomeness but admitted that the vendee got a warranty that the food was of "a reputable brand, packed and inspected in accordance with approved methods." These courts no doubt have the correct view on strict interpretation of the principles of the law of sales. The better holding, however, is that of the prevailing opinion, for reasons well stated in *Chapman* v. *Roggenkamp,* 182 Ill. App. 117: " . . . . public safety demands that there should be an implied warranty . . . . as a general rule, in the sale of provisions the vendor has so many more facilities for ascertaining the soundness or unsoundness of the article offered for sale than are possessed by the purchaser to assume the risk." See also, *Sloan* v. *Woolworth,* 193 Ill. App. 620; *Cook* v. *Darling, supra.* It is a strong argument of the prevailing opinion, also, that the implied warranty must be regarded as a necessary inference from "the relation of the parties." It could hardly be expected that the customer should follow the suggestion of the N. Y. court in *Julian* v. *Laubenberger.* It would be impractical to open the can at the store; and it would be equally impractical to ask for an express warranty in all retail purchases when the small purchases are so numerous. It would seem that an implied warranty ought to be imposed from the nature of the retailer's business and the peculiar relation of dealer and customer. Dealers in food should be insurers of wholesomeness whether retailers or otherwise. The public interest so demands. The English courts are in accord with the principal case, *Jackson* v. *Watson,* (1909), 2 K. B. 193.

SPECIFIC PERFORMANCE—STATUTE OF FRAUDS—PART PERFORMANCE—MUTUALITY OF REMEDY.—Defendants entered into an oral contract with the plaintiff for the purchase of a house and lot for $1,800. Defendants paid plaintiff $100, entered into possession of the house, which plaintiff vacated for that purpose, and made extensive changes in the premises which lessened their value Defendants subsequently refused to complete the contract. Bill by the plaintiff for specific performance. *Held,* that, inasmuch as part performance by the purchaser (defendants) took the case out of the statute of frauds so that he might have maintained suit against the vendor (plaintiff), the plaintiff may have relief. *Pearson* v. *Gardner et al.* (Mich. 1918), 168 N. W. 485.

The decision is placed squarely upon the ground of mutuality of remedy.

This is unfortunate for a number of reasons. In the first place, it seems to imply that there was not part performance by the vendor. Where possession is given under an oral contract of sale, it operates both for and against the purchaser. The owner has allowed the purchaser to do an act on the strength of the contract,—to-wit: enter on the land; the purchaser has induced the owner to do an act on the faith of the contract: withdraw from the land. Both are therefore bound in jurisdictions where taking possession is a sufficient act of part performance. *Wilson* v. *Hartlepool Ry. Co.*, 2 De G. J. & S. 475, 485; FRY: SPECIFIC PERFORMANCE, (ed. 5) § 604. In Michigan mere possession is not enough; but if expenditure by way of improvements and the exercise of acts of ownership will, in addition to possession, amount to part performance for the purchaser, it seems clear that giving up possession to the purchaser and permitting him to do acts which materially lessen the value of the premises should operate in favor of the vendor. The principle in either case is the same. In the second place the doctrine of mutuality of remedy does not furnish the easy solution which the court assumes. It is now an exploded doctrine, so many exceptions having accumulated that the principle is to all intents and purposes gone. Even if it be accepted, one of the recognized exceptions relates to the statute of frauds. If the defendant had signed a memorandum of the contract, the plaintiff might have had specific performance, even though the defendant could not hold him to the contract. AMES, MUTUALITY IN SPECIFIC PERFORMANCE, 3 COL. L. REV. 1, 5, LECTURES LEGAL HISTORY, 370, 373. For cases, see AMES, CASES EQUITY, 421, n. 1. It is difficult to reconcile this decision with such a firmly established exception. Again, it has more than once been declared that the acts of part performance must be done by the party seeking to enforce the contract; indeed it is believed that it would be difficult to gnd a case where that was not the situation. Cf. POMEROY, CONTRACTS (ed. 2) § 105. Finally it is by no means clear that the defendant would be entitled to specific performance. Where something in addition to possession is required the better view is that the acts done must be beneficial to the estate. *Hollis* v. *Edwards*, 1 Vern. 159; *Wolfe* v. *Frost*, 4 Sand. Ch. 79; *Chamberlain* v. *Manning*, 41 N. J. Eq. 651. The court seems deliberately to have selected the weakest basis upon which to support its decision.

TRESPASS—DAMAGES—NOTICE TO AGENT—WILLFUL TRESPASSER.—Where suit was brought against a defendant in trespass for cutting timber from the plaintiff's land, the defendant having relied upon the advice of his attorney that his title to such land was good; *held*, though the defendant was charged with his attorneys knowledge as to the claims of third persons, where he had no actual knowledge thereof and acted in good faith upon the advice of this attorney, he was not guilty of moral bad faith and should be allowed the expenses incurred by him in cutting and removing the timber. *Allen* v. *Frank Janes Co., Limited* (La., 1918), 78 South 115.

In measuring the damages for cutting and removing timber by trespassers the court made a distinction between legal and moral bad faith. One who had knowledge that he had no title to lands, because of the imputation to him of his agent's knowledge of the facts, was held to be guilty of legal